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Message Text

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44
ORIGIN EUR-25

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L/M/SCA:MR. BOYD
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---------- 035844
O 071955Z SEP 73
FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW IMMEDIATE

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E.O. 11652:N/A
TAGS:PINS, OS, UR,US
SUBJECT:ATTACHMENT OF BELOGORSK

REF: STATE 177739

1. SOVIET EMBASSY COUNSELOR ISAKOV CAME TO SEE ACTING DIRECTOR EUR/SOV LUERS SEPTEMBER 7. ISAKOV EXPRESSED CONCERN OVER THE ATTACHMENT OF THE BELOGORSK AND HOPED THAT IT WOULD BE RELEASED PROMPTLY. ISAKOV SAID THE ACTION WAS UNEXPECTED BECAUSE (A) THE US AND USSR HAD AGREED IN JUNE TO SET UP A BILATERAL ARBITRATION BOARD TO HANDLE SUCH DISPUTES; (B) THE BELOGORSK WAS ENGAGED IN JOINT US-SOVIET COOPERATIVE RESEARCH AND HAD US SCIENTISTS ABOARD; (C) THE SOVIETS HAD BEEN DIRECTLY IN TOUCH WITH THE CLAIMANTS WHICH OWED THE SOVIETS A REPLY SINCE EARLY THIS YEAR. ISAKOV ALSO REMARKED THAT THE LEGAL CLAIM OF THE PLAINTIFF UNDER SOVIET LAW WAS WEAK.

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2. LUERS RESPONDED THAT THE ACTION WAS INDEED REGRETTABLE

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FROM THE OVERALL POINT OF VIEW OF OUR IMPROVED RELATIONS. LUERS NOTED THAT ISAKOV KNEW OUR SYSTEM WELL ENOUGH TO REALIZE THAT THIS ACTION WAS TAKEN BY A PRIVATE AMERICAN INDIVIDUAL THROUGH THE COURTS AND THAT THE USG HAD DONE NOTHING TO BRING IT ABOUT NOR WAS IT IN A POSITION TO INTERFERE WITH DUE PROCESS IN SETTLEMENT OF PRIVATE CLAIMS.

3. LUERS CONTINUED THAT WE HOPED THAT THE SOVIETS WOULD NOT CONSIDER THAT THIS ROUTINE COURT ACTION RUNS COUNTER TO THE SPIRIT OF THE AGREEMENT TO SET UP THE ARBITRATION BOARD. IT IS CLEAR THAT THERE HAS BEEN NO VIOLATION OF THE LETTER OF THE AGREEMENTS. LUERS NOTED THAT THE US HAD NAMED ITS BOARD MEMBERS AND HOPED THE USSR WOULD DO SO SOON SO THAT THE BOARD COULD BEGIN TO FUNCTION. LUERSALSO NOTED, HOWEVER, THAT REFERRAL OF DISPUTES TO THE BOARD WAS VOLUNTARY AND THERE WAS NO WAY WE COULD COMPEL A PRIH VATE PLAINTIFF TO USE IT. WE HOPED THE PRESENT ACTION WOULD NOT INTERFERE WITH PROGRESS TO PUT THE BOARD INTO OPERATION SO THAT HOPEFULLY FUTURE DISPUTES OF THIS TYPE COULD BE DEALT WITH THROUGH THAT CHANNEL.

4. IN REGARD TO THE JOINT RESEARCH, LUERS SAID THAT COOPERATION AND EXCHANGES IN FISHERIES WERE PROCEEDING SMOOTHLY AND WE DESIRED THESE CONTINUE AND THAT CONTACTS BE EXPANDED. THE SCIENTISTS ON THE BELOGORSK SHOULD, OF COURSE, PROCEED WITH THEIR PLANNED CONTACTSWITH AMERICAN SCIENTISTS AT WOODS HOLE AND ACTIVITIES NOT INVOLVING THE VESSEL COULD CONTINUE.

5. REGARDING THE CLAIM ITSELF, DEPARTMENT LEGAL OFFICER ADVISED THE SOVIETS TO CONSULT COUNSEL. HE OBSERVED THAT THE SOVIETS COULD PROCEED INFORMALLY, MAKING DIRECT CONTACT WITH THE PLAINTIFFS, OR PURSUE THE MATTER IN THE COURTS. IF THEY WISHED TO CLAIM SOVEREIGN IMMUNITY FOR THE BELOGORSK, THIS COULD BE DONE BY RAISING THE DEFENSE OF SOVEREIGN IMMUNITY DIRECTLY TO THE COURTS OR BY REQUESTING THROUGH A DIPLOMATIC NOTE THAT THE USG MAKE A SUGGESTION OF SOVEREIGN IMMUNITY TO THE COURT. IF THE CLAIM WERE MADE TO THE DEPARTMENT, WE WOULD ACT UPON IT WITHOUT DELAY. LEGAL OFFICER ALSO EXPLAINED THAT IF THE LIMITED OFFICIAL USE

SOVIETS DESIRED EVEN MORE PROMPT DEPARTURE OF VESSEL, BOND COULD BE POSTED, BUT THAT SUCH A STEP SHOULD BE TAKEN ONLY AFTER CONSULTATIONS WITH THEIR LEGAL COUNSEL.

6. ISAKOV EXPRESSED APPRECIATION FOR REMARKS OF LUERS AND LEGAL OFFICER AND SAID THE EMBASSY WOULD BE IN TOUCH WITH THE DEPARTMENT LATER IN THE DAY. HE SAID THAT THE BELOGORSK HAD PLANNED TO DEPART ON MONDAY, SEPTEMBER 10

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AND HE HOPED THAT THIS DEPARTURE COULD BE MADE.

7. IN CONCLUDING, LUERS POINTED OUT THAT HAD THE BELOGORSK NOT BEEN ATTACHED, THE PLAINTIFFS WOULD HAVE MOVED AGAINST SOME OTHER SOVIET SHIP IN MASSACHUSETTS OR POSSIBLY IN SOME OTHER STATE. HE SAID THAT AS OUR COMMERCIAL RELATIONS AND EXCHANGES EXPAND OTHER PROBLEMS OF THIS NATURE MAY ARISE

AND IT MIGHT BE ADVISABLE FOR THE SOVIET EMBASSY TO HAVE LEGAL COUNSEL AND DEVELOP AN APPROACH TO SUCH CASES. ISAKOV SAID HE UNDERSTOOD AND OFFERED THE PERSONAL VIEW IT MIGHT BE BETTER TO PURSUE SUCH CASES IN THE COURTS SINCE CLAIMANTS USUALLY HAD LITTLE EVIDENCE AND WEAK CASES.

8. SUBSEQUENTLY THE DEPARTMENT LEARNED THAT A SECOND ATTACHMENT MAY BE FILED AGAINST THE BELOGORSK ON BEHALF OF THE 100 FATHOMS CORPORATION. SOVIET EMBASSY HAS BEEN INFORMED.

9. SOVIET EMBASSY JUST TELEPHONED THAT IT WILL SEND OVER NOTE TO DEPARTMENT TODAY REQUESTING SOVEREIGN IMMUNITY STATUS FOR BELOGORSK.

10. EMBASSY MOSCOW MAY DRAW ON THIS AND REFERENCED MESSAGE TO INFORM MFA. RUSH

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